

Valentina Vadi

Power, Law and Images:  
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Material Culture

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# Power, Law and Images:

## International Law and Material Culture

Valentina Vadi \*

Time present and time past,  
Are both perhaps present in time future,  
And time future contained in time past.  
T.S. Eliot, *Burnt Norton*<sup>1</sup>

### Abstract

This article aims to investigate the complex relationship between international law and material culture, that is, objects made or modified by human beings. In addition to their material, aesthetic, cultural and sometimes iconic value, artefacts can have international legal relevance. They can be used as evidence for the study of international law. They can epitomize a significant event of international legal history, depicting the outbreak of a war, the making of a treaty or the consequences of war. They can also constitute evidence, or the object (*petitum*) or the reason underlying a claimant cause of action (*causa petendi*) of given international disputes.

The interplay between international law and material culture raises important epistemological and methodological questions about whether, and if so how, international lawyers might go about researching cultural artefacts that are relevant to their field. This article aims to open a discussion on the relevance of material culture in international law. It has an interdisciplinary character, aiming to improve communication across international law scholarship and material culture studies and among international lawyers, art historians, artists, and the public at

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<sup>1</sup> T.S. ELIOT, COLLECTED POEMS (1909–1935) (1936).

large. The article shows that material culture constitutes an incredibly rich source of information, and a prism through which to think critically, and open a dialogue, about international law.

## Introduction

Visitors at the Rijksmuseum in Amsterdam are often startled by the book chest of Hugo Grotius (1583–1645),<sup>2</sup> which is exhibited amidst the finest paintings of the Dutch Golden Age. Most visitors are not jurists let alone experts in international law or legal history. What they see is a rather simple wooden box, with iron locks and leather features, encased in glass and located at the centre of a large room. Yet, when international lawyers visit the museum, they inevitably gravitate toward the book chest. Once used for storing books, the large, solid box inexorably captures the imagination of international lawyers.<sup>3</sup>

Hugo Grotius is deemed to be one of the founders of international law.<sup>4</sup> Considered “the miracle of Holland,” he wrote treatises that deeply influenced the development of international law as we know it.<sup>5</sup> Imprisoned for his religious beliefs — as he was considered too Catholic by the Reformers<sup>6</sup> and too Protestant by the Catholics<sup>7</sup> — he aptly escaped by hiding in a chest, which his wife used to send him books while he was serving his prison sentence.<sup>8</sup> Serving as the ambassador of Protestant Sweden in Catholic France, Grotius would later complete his major intellectual works, including the *De Jure Belli ac Pacis* (On the Law of War and Peace).<sup>9</sup>

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<sup>2</sup> The Book Chest of Hugo Grotius is physically displayed in the Rijksmuseum, Amsterdam, and can be seen at HUGO DE GROOT, *available at* <https://www.rijksmuseum.nl/en/rijksstudio/historical-figures/hugo-de-groot> (last visited Mar. 30, 2018).

<sup>3</sup> When I visited the museum several years ago, the chest certainly captured my imagination. Admittedly, I did not speculate about the claustrophobic practical aspect of how one might have felt to have been shut up in it. Rather, I was captured by the adventurous dimension of Grotius’ life and work and invested the trunk with special significance. The chest appeared as the promise of a new beginning, a symbol of resilience and success, and as an essential element in the history of international law. I now wonder whether the chest can also constitute a powerful metaphor of international lawyers’ personal struggles, or the image of unveiling what is hidden, that is, truth.

<sup>4</sup> *But see* JAMES BRIERLY, *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE*, 28 (1963) (noting that to consider Grotius as the founding father of international law is to exaggerate his originality and to do less than justice to the writers who preceded him).

<sup>5</sup> Hedley Bull, *The Importance of Grotius in the Study of International Relations*, in HUGO GROTIUS AND INTERNATIONAL RELATIONS, 65, 67 (Hedley Bull et al. eds., 1990).

<sup>6</sup> C.G. Roelofsen, *Grotius and the International Politics of the Seventeenth Century*, in HUGO GROTIUS AND INTERNATIONAL RELATIONS, 95, 130 (Hedley Bull, Benedict Kingsbury & Adam Roberts eds., 1990) (noting that the Reformers perceived him as sympathizing for the Catholics (*Grotius Papizans*)).

<sup>7</sup> HENK J.M. NELLEN, *HUGO GROTIUS: A LIFELONG STRUGGLE FOR PEACE IN CHURCH AND STATE 1583–1645* 649, (2014) (noting that the Catholics considered Grotius as “not Catholic enough” (*non satis catholice*)).

<sup>8</sup> *See* Bull, *supra* note 5, at 68.

<sup>9</sup> HUGO GROTIUS, *DE JURE BELLI AC PACIS LIBRI TRES* (James Brown Scott ed., Francis W. Kelsey et al. trans., Oxford Univ. Press 1925) (1625).

Usually considered as the evidence and the tool of an incredible escape, and a reminder that no man is a prophet in his own land (*nemo propheta in patria*), Grotius' book chest also proves that he was an erudite and avid reader. The existing letters that Grotius wrote to his relatives indicate that he managed to purposefully read specific books for writing his masterpiece, the *De Jure Belli ac Pacis*.<sup>10</sup> Therefore, the book chest constitutes a visual clue that can contribute to ongoing investigations on early modern international law. In particular, the chest confirms that Grotius read several treatises before writing his own and that the origins of international law may be more pluralist than one originally thought. The book chest also powerfully epitomizes a promise of freedom. Books have an emancipatory potential. They can improve our lives, by making us better human beings. In Grotius' case, reading books provided him inspiration, relief, and ultimately, a way to escape. More fundamentally, Grotius' book chest can constitute a meaningful tool of investigation and a useful key for unveiling the complex relationship between international law and material culture, that is, "objects made or modified" by human beings.<sup>11</sup> The chest is a specimen of the category of material culture, an incredibly rich source of information, and a thing through which to think about (and open a dialogue about) international law.

Material culture is a broad concept, inclusive of "objects made or modified" by human beings<sup>12</sup> as diverse as a chest, a vase, a painting, a house or a city.<sup>13</sup> Artworks, such as paintings, sculptures, crafts, photographs, films, literature, and architecture, "constitute a large and special category within artifacts because their . . . aesthetic and . . . (iconic) dimensions make them direct and often . . . intentional expressions of cultural belief."<sup>14</sup> The study of material culture represents a "new cross-disciplinary field of enquiry" to which archaeology, anthropology and other disciplines contribute.<sup>15</sup>

Why should one investigate material culture in the study and/or making of international law? Is there anything to be discovered in objects that differ from, complement, supplement, or contradict what can be learned from more traditional written sources? In addition to their material, aesthetic, cultural and sometimes iconic value, artifacts can have international legal relevance. They can constitute evidence for the study of international law. They can epitomize a significant event of international legal history, depicting the outbreak of a war, the making of a treaty or the consequences of war. They can also constitute the object (*petitum*) or the

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<sup>10</sup> Peter Haggenmacher, *Grotius and Gentili: A Reassessment of Thomas E. Holland's Inaugural Lecture in HUGO GROTIUS AND INTERNATIONAL RELATIONS* 152 (Hedley Bull et al. eds., Clarendon Press 1990) (Grotius wrote in a letter to have read both *De Jure Belli* and the *Advocatio Hispanica* in prison); GESINA VAN DER MOLEN, ALBERICO GENTILI AND THE DEVELOPMENT OF INTERNATIONAL LAW: HIS LIFE, WORK AND TIMES 243 (1968) (noting that "during his captivity at Loevestein from 1619–1621, [Grotius] occupied himself by studying Gentili's *De iure belli* and the *Advocatio Hispanica*").

<sup>11</sup> Jules David Prown, *Mind in Matter—an Introduction to Material Culture Theory and Method*, 17 WINTERTHUR PORTFOLIO 1, 1 (1982).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.*

<sup>15</sup> Dan Hicks & Mary C. Beaudry, *Introduction—Material Culture Studies: A Reactionary View*, in THE OXFORD HANDBOOK OF MATERIAL CULTURE STUDIES 1, 2 (2010).

reason underlying a claimant cause of action (*causa petendi*) of given international disputes.<sup>16</sup>

The interplay between international law and material culture raises “important epistemological and methodological questions” about whether, and if so how, international lawyers might go about researching cultural artifacts that are relevant to their field.<sup>17</sup> This article aims to open a discussion on the relevance of material culture in international law, bridge a gap between international law scholarship and material culture studies, and facilitate communication among different stakeholders including international lawyers, art historians, artists, and the public at large. It has an interdisciplinary nature, relying on international law, art history, and material culture sources.

The article proceeds as follows. First, it illustrates the promises of using material culture for studying, researching and critically assessing international law. Second, it examines the pitfalls of such approach. Lastly, after a critical evaluation, it concludes that the traditional lack of reflection on the role of material culture in international law does not necessarily correspond to a lack of relevance; on the contrary, international lawyers have engaged in material culture in a variety of ways.

## 1. International Law and Material Culture

Material culture is an inclusive notion that includes “objects made or modified by” human beings.<sup>18</sup> Material culture is a broad concept, inclusive of artifacts as diverse as objects, buildings, and even landscapes.<sup>19</sup> It has material, aesthetic, cultural, and sometimes iconic value. Artworks, such as paintings, sculptures, crafts, photographs, films, literary works, and architecture, are a special type of material culture because of their artistic, aesthetic, and iconic value.<sup>20</sup>

In certain cases, material culture can also have international legal value. “International cultural law has emerged as the new frontier of international law[,] governing cultural phenomena,” including material culture, in their diverse

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<sup>16</sup> See generally BEAT SCHÖNENBERGER, THE RESTITUTION OF CULTURAL ASSETS (Caroline Thonger, trans., Eleven Int'l Pub. 2009) (2009) (examining the potential grounds for claiming the restitution of a cultural asset, including the obstacles preventing such restitution); SARAH DROMGOOLE, UNDERWATER CULTURAL HERITAGE AND INTERNATIONAL LAW (2013) (discussing the recovery and salvage of underwater cultural heritage); ANN M. NICGORSKI ET AL., CULTURAL HERITAGE ISSUES: THE LEGACY OF CONQUEST, COLONIZATION, AND COMMERCE (James AR Nafziger & Ann M. Nicgorski eds., 2009) (discussing, inter alia, the return of cultural artifacts removed during colonial times and postcolonial disputes over cultural heritage); JEANNETTE GREENFIELD, THE RETURN OF CULTURAL TREASURES (Cambridge University Press 2d ed. 1996) (1989) (discussing the return of antiquities and international law governing the same).

<sup>17</sup> Sophie Woodward, ‘Object Interviews, Material Imaginings and ‘Unsettling’ Methods: Interdisciplinary Approaches to Understanding Materials and Material Culture,’ 16 QUALITATIVE RESEARCH 359, 360 (2016).

<sup>18</sup> Prown, *supra* note 11, at 1.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.* (clarifying that “all tangible works of art are part of material culture, but not all the material of material culture is art”).

forms.<sup>21</sup> The return of cultural artifacts to the legitimate owners,<sup>22</sup> the recovery of underwater riches,<sup>23</sup> the governance of sites of outstanding and universal value,<sup>24</sup> and the protection of cultural sites in times of war<sup>25</sup> are just some of the issues governed by such field of study. Nowadays, “a tapestry of national, regional, and international law instruments imposes extensive obligations on states to respect and protect cultural heritage.”<sup>26</sup> The protection of cultural heritage is a fundamental public interest that is closely connected to fundamental human rights and is deemed to be among the best guarantees of international peace and security.<sup>27</sup> This protection “can be thought of as a public interest” in terms of state interest, but it also reflects the common interest of the international community as a whole.<sup>28</sup> Courts have even hypothesized the existence of a cultural public order (*ordre public culturel*).<sup>29</sup> Therefore, not only can the destruction of cultural heritage in times of armed conflict constitute a violation of international humanitarian law,<sup>30</sup> but lack of

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<sup>21</sup> Valentina Vadi, *The Cultural Wealth of Nations in International Law*, 21 TUL. J. OF INT’L & COMP. L. 87, 87 (2012) (defining international cultural law as an emerging field of study and mapping its current contours); Francesco Francioni, *Beyond State Sovereignty: The Protection of Cultural Heritage as a Shared Interest of Humanity*, 25 MICH. J. INT’L L. 1209, 1213 (2004) (discussing the protection of cultural heritage under international law).

<sup>22</sup> Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property art. 7(b)(ii), Nov. 14, 1970, 823 U.N.T.S. 231; *see generally* ANA FILIPA VRDOJAK, INTERNATIONAL LAW, MUSEUMS AND THE RETURN OF CULTURAL OBJECTS (2006) xiv (discussing the restitution of cultural artifacts to their community of origin).

<sup>23</sup> *See generally*, Convention on the Protection of the Underwater Cultural Heritage, Nov. 2, 2001, 41 I.L.M. 40; CRAIG FORREST, INTERNATIONAL LAW AND THE PROTECTION OF CULTURAL HERITAGE (2010) (examining the protection of cultural heritage under international law); SARAH DROMGOOLE, UNDERWATER CULTURAL HERITAGE AND INTERNATIONAL LAW (2013) (examining and critically assessing the safeguarding of underwater cultural heritage under international law); James A.R. Nafziger, *The Evolving Role of Admiralty Courts in Litigation of Historic Wreck*, 44 HARV. INT’L L. J. 251, 252 (2003) (investigating the role of admiralty courts in the adjudication of underwater cultural heritage-related disputes).

<sup>24</sup> *See* Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 1037 U.N.T.S. 151; THE 1972 WORLD HERITAGE CONVENTION—A COMMENTARY (Francesco Francioni ed., 2008).

<sup>25</sup> Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240; ROGER O’KEEFE, THE PROTECTION OF CULTURAL PROPERTY IN ARMED CONFLICT (James Crawford & John S. Bell, eds., 2011); PROTECTING CULTURAL PROPERTY IN ARMED CONFLICT (Nout van Woudenberg & Liesbeth Lijnzaad eds., 2010); Micaela Frulli, *The Criminalization of Offences against Cultural Heritage in Times of Armed Conflict: The Quest for Consistency*, 22 EUR. J. INT’L L. 203 (2011).

<sup>26</sup> Vadi, *supra* note 21, at 120.

<sup>27</sup> Valentina Vadi, *Global Cultural Governance by Investment Arbitral Tribunals: The Making of a Lex Administrativa Culturalis*, 33 B.U. INT’L L. J. 457, 458 (2015).

<sup>28</sup> *Id.* at 461.

<sup>29</sup> *See generally* Pierre Lalive, *Réflexions sur un ordre public culturel*, in L’EXTRANÉITÉ OU LE DÉPASSEMENT DE L’ORDRE JURIDIQUE ÉTATIQUE: ACTES DU COLLOQUE DES 27 ET 28 NOVEMBRE 1997 ORGANISÉ PAR L’INSTITUT D’ÉTUDES DE DROIT INTERNATIONAL DE LA FACULTÉ DE DROIT DE L’UNIVERSITÉ DE LAUSANNE 155, 155 (Éric Wyler & Alain Papaux eds., 1999) (discussing emerging jurisprudence and hypothesizing the existence of a cultural public order); Valentina Vadi, CULTURAL HERITAGE IN INTERNATIONAL INVESTMENT LAW AND ARBITRATION 259 (2014) (discussing the Swiss case that referred to a public interest concerning cultural goods).

<sup>30</sup> For instance, in the *Genocide* case, Bosnia and Herzegovina alleged, *inter alia*, that Serbian forces’ attempt “to eradicate all traces of the culture of the protected group through the destruction of historical, religious and cultural property” inflicted on the Bosnian Muslim conditions of life

protection or even destruction of cultural heritage in times of peace can constitute a violation of international cultural law.<sup>31</sup>

While cultural heritage has received increased protection under international law, and therefore increased attention by international law scholars, much less attention has been paid to the broader category of material culture and its interplay with international law. This article aims at addressing this gap in international legal scholarship. Rather than focusing on cultural heritage and its regulation under international law, the article focuses on the broader category of material culture and its interaction with international law. This approach complements previous research by exploring an under researched topic.

Objects can be “‘alternative sources’ that can complement documentary materials in answering . . . questions.”<sup>32</sup> For instance, photographs can be and have been used as evidence before international courts and tribunals.<sup>33</sup> Material culture can epitomize a significant event of international legal history, depicting the outbreak of a war or the making of a treaty or other events of international relevance. Material culture can constitute the object (*petitum*) or the reason underlying a claimant cause of action (*causa petendi*) of given international law disputes.<sup>34</sup> It can also prevent international disputes, becoming the object of

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calculated to bring about their physical destruction. Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶ 320 (Feb. 26). The Court considered that there was “conclusive evidence of the deliberate destruction of the historical, cultural and religious heritage of the protected group.” *Id.* ¶ 344. However, in the Court’s view, “the destruction of historical, cultural and religious heritage c[ould] not be considered to constitute the deliberate infliction of conditions of life calculated to bring about the physical destruction of the group” and thus “it d[id] not fall within the categories of acts of genocide set out in Article II of the Convention.” *Id.*; see also Partial Award: Central Front - Eritrea’s Claims 2, 4, 6, 7, 8 & 22 (Eri v. Eth., 26 R.I.A.A. 115-153 (Eri.-Eth. Claims Comm’n 2004). The Commission held that “the felling of the [S]tela [of Matara] was a violation of customary humanitarian law.” *Id.* ¶ 113. The Commission also found Ethiopia “liable for the unlawful damage inflicted upon the Stela of Matara in May 2000.” *Id.* ¶ 114.

<sup>31</sup> See generally *Recommendation Concerning the Preservation of Cultural Property Endangered by Public or Private Works*, UNESCO, Nov. 19, 1968; Sabine von Schorlemer, *Compliance with the UNESCO World Heritage Convention: Reflections on the Elbe Valley and the Dresden Waldschlösschen Bridge*, 51 GERMAN Y.B. INT’L L. 321, 321 (2008) (discussing the deletion of the Elbe Valley from the World Heritage List); Diana Zacharias, *Cologne Cathedral versus Skyscrapers – World Cultural Heritage Protection as Archetype of a Multilevel System*, 10 MAX PLANCK Y.B. OF U.N. L. 273, 273 (2006) (discussing how the Cologne Cathedral remained inscribed in the World Heritage List).

<sup>32</sup> THE OXFORD HANDBOOK OF MATERIAL CULTURE STUDIES 3 (Dan Hicks & Mary C. Beaudry eds., 2010).

<sup>33</sup> See Daniel Joyce, *Photography and the Image-Making of International Justice*, 4 L. AND HUMAN. 229, 229-30 (2010).

<sup>34</sup> See *Temple of Preah Vihear* (Cambodia v. Thai.), Judgment, 1962 I.C.J. 6, 34 and 37 (June 15) (holding that the Temple of Preah Vihear was situated in territory under the sovereignty of Cambodia and, in consequence, that Thailand was under an obligation to withdraw any military or police forces, that it had stationed at the Temple and to restore to Cambodia any objects which had been removed from the Temple by Thai authorities); Request for Interpretation of Judgment of 15 June 1962 in *Temple of Preah Vihear* (Cambodia v. Thai.), Judgment, 2013 I.C.J. 281, 318 (Nov. 11) para. 107 (concluding that “the first operative paragraph of the 1962 Judgment determined that Cambodia had sovereignty over the whole territory of the promontory of Preah Vihear, as defined in paragraph 98 of the present Judgment, and that, in consequence, the second operative paragraph required Thailand to withdraw from that territory the Thai military or police forces, or other guards or keepers, that were stationed there”); *Certain Property* (Liech. v. Ger.), Judgment, 2005 I.C.J. 6, para.



diplomatic relations.<sup>35</sup> In extreme circumstances, cultural artifacts have also been considered as bargaining chips, that is, as items to be sold or bartered in difficult economic or political crisis.<sup>36</sup> They may also be used as a blue chip, that is, as a form of reliable investment, expected to hold or increase its economic value regardless of economic trends.<sup>37</sup> More fundamentally, material culture can “shape international legal narratives and responses.”<sup>38</sup>

## 2. The Promises of Using Material Culture

There are several benefits to using material culture for investigating and/or making international law. First, material culture can make international law more accessible to a wider range of audiences through presenting complexity in a way that is easy for the public to understand. A picture is worth a thousand words; for instance, photographer Nick Ut’s photograph of a Vietnamese girl running amid other fleeing villagers, after a napalm attack, became one of the most haunting images of the Vietnam War.<sup>39</sup> Analogously, journalist Steve McCurry’s photographic portrait of an Afghan Girl in a red headscarf became emblematic of the suffering of the civilian population during the time of Soviet occupation of Afghanistan.<sup>40</sup> Material culture can promote transparency, accountability, and even an opportunity for self-reflection of international organizations, thus promoting the perceived legitimacy

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54 (10 Feb. 10) (concerning cultural goods confiscated after WWII in the former Czechoslovakia, the Court declined jurisdiction *ratione temporis*); see generally ALESSANDRO CHECHI, *THE SETTLEMENT OF INTERNATIONAL CULTURAL HERITAGE DISPUTES: TOWARDS A LEX CULTURALIS* (2014).

<sup>35</sup> See generally, Alessandro Chechi, *The Return of Cultural Objects Removed in Times of Colonial Domination and International Law: The Case of the Venus of Cyrene*, 18 ITALIAN Y.B. INT’L L. 159, 159 (2008) (discussing the return of the Venus of Cyrene to Libya).

<sup>36</sup> See Simon Shuster, *Greece May Have to Sell Islands and Ruins Under Its Bailout Deal*, TIME (July 13, 2015), available at <http://time.com/3956017/greece-bailout-selloff/> (last visited Mar. 5, 2018); see Geoffrey Robertson, *Let’s do a Brexit Deal with the Parthenon Marbles*, GUARDIAN (Apr. 4, 2017), available at <https://www.theguardian.com/commentisfree/2017/apr/04/brexit-deal-parthenon-marbles> (last visited Mar. 30, 2018).

<sup>37</sup> See, e.g., Jennifer Rankin, *How Monet became Blue Chip: the Language of Wealthy Art Buyers*, THE GUARDIAN (Jan. 30, 2015), available at <https://www.theguardian.com/artanddesign/2015/jan/30/how-monet-became-blue-chip> (last visited Feb. 8, 2018) (noting that “In terms the art world has borrowed from finance, Monet is blue chip, a guaranteed sell. Last year Sotheby’s sold a Monet water lilies painting for £31.7m, the second-highest price paid for his work. The masterpiece was sold in 10 minutes, with the bidding rising in increments of £250,000.”).

<sup>38</sup> Joyce, *supra* note 33, at 231.

<sup>39</sup> *Girl, 9, Survives Napalm Burns*, N.Y. TIMES (June 11, 1972), available at <http://www.nytimes.com/1972/06/11/archives/girl-9-survives-napalm-burns.html> (last visited Feb. 2, 2018).

<sup>40</sup> Kathy Newman, *A Life Revealed*, NAT’L GEOGRAPHIC, (2002), available at <https://www.nationalgeographic.com/magazine/2002/04/afghan-girl-revealed/> (last visited Mar. 03, 2018). (discussing the cover of the National Geographic, June 1985); Wendy S. Hesford & Wendy Kozol, *JUST ADVOCACY?: WOMEN’S HUMAN RIGHTS, TRANSNATIONAL FEMINISMS, AND THE POLITICS OF REPRESENTATION 1* (Wendy S. Hesford & Wendy Kozol eds., 2005) (arguing that “the highly publicized 1985 cover has come to stand for the plight of Afghan women and refugees worldwide . . . this portrait has functioned as . . . Mona Lisa . . . onto whom the discourse of human rights has been placed.”).

of the same.<sup>41</sup> At the same time, material culture also opens new perspectives and raises new research questions, enabling international lawyers to consider international law from a different angle.

Second, the use of material culture can also have a pedagogical value, becoming a tool for building and sharing ideas.<sup>42</sup> International law is “a text-based discipline,”<sup>43</sup> with some reservations about images.<sup>44</sup> While law students are used to black letter textbooks, inserting some visual aids in legal treatises and in teaching materials such as graphs,<sup>45</sup> pictures,<sup>46</sup> and even movies<sup>47</sup> can help them by rendering their discipline more concrete and interesting. Material culture can make international law accessible across disciplines, and among academic, practitioner and public audiences. Material culture can “add[] a whole new layer of learning that textbooks simply cannot provide.”<sup>48</sup> Material culture “can make abstract ideas . . . come alive for students.”<sup>49</sup>

This approach is particularly promising for the study of international law and its history. As is known, professors of international law are “a special sub-category of academics within humanities and social sciences.”<sup>50</sup> Nowadays, international law governs almost any field of human activity, and it has become a key subject of study. Moreover, knowledge of international law is a condition of its respect. Fostering education about international law is a way to build peace “in the minds of men” and women,<sup>51</sup> “strengthen[] international peace and security[,] and promot[e] friendly relations and co-operation among States.”<sup>52</sup> International law

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<sup>41</sup> Joyce, *supra* note 33, at 231.

<sup>42</sup> See, e.g., Wouter Werner, *Justice on Screen: A Study of Four Documentary Films on the International Criminal Court* 29 LEIDEN J. OF INT’L LAW 1043, 1043 (2016) (analyzing four documentaries on the International Criminal Court and highlighting that “[d]ocumentaries have thus become important tools for education and the spread of imageries of international criminal justice.”).

<sup>43</sup> Zenon Bankowski & Maksymilian Del Mar, *The Torch of Art and the Sword of Law*, in LAW AND ART 165 (Oren Ben-Dor ed., 2011) (also noting at 167, that “the exclusive emphasis on textual resources . . . carries with it significant dangers”).

<sup>44</sup> See generally Costas Douzinas, *Whistler v. Ruskin: Law’s Fear of Images*, 19 ART HIST. 353 (1996) (referring to law generally).

<sup>45</sup> For an example of a graph used for visual aid, see Anthea Roberts, *Clash of Paradigms: Actors and Analogies Shaping the Investment Treaty System*, 107 AM. J. OF INT’L L. 45, 58 (2013).

<sup>46</sup> For an example of a picture used for visual aid, see Amanda Perry-Kessaris, *Anemos-ity, Apatheia, Enthousiasmos: An Economic Sociology of Law and Wind Farm Development in Cyprus*, 40 J. OF L. AND SOC’Y 68, 72 (2013).

<sup>47</sup> Olivier Corten, *Mais on est donc passée la Charte des Nations Unies? Représentations et sous-représentations des règles sur l’usage de la force dans les films d’action*, in DU DROIT INTERNATIONAL AU CINEMA 89–133 (Olivier Corten and François Dubuisson eds., 2015); see generally Stefan Engert & Alexander Spencer, *International Relations at the Movies: Teaching and Learning International Politics Through Films*, 17 PERSPECTIVES 83 (2009); See generally Anthony Chase, *International Law on Film*, 24 L. STUD. 559 (2000).

<sup>48</sup> Ernest Andrew Brewer & Penelope Fritzer, *Teaching Students to Infer Meaning Through Material Culture*, 84 THE CLEARING HOUSE: A J. OF EDUC. STRATEGIES, ISSUES AND IDEAS 43, 43 (2011).

<sup>49</sup> *Id.* at 44.

<sup>50</sup> Pierre D’Argent, *Teachers of International Law*, in INTERNATIONAL LAW AS A PROFESSION 412, 412, 417 (Jean d’Aspremont et al. eds., 2017) (considering teachers of international law as “entrusted with a social mission that transcends them.”).

<sup>51</sup> UNESCO, *Constitution of the United Nations Educational, Scientific and Cultural Organization* (Nov. 16, 1945) (affirming that “since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed.”).

<sup>52</sup> D’Argent, *supra* note 50, at 417.

promotes the dissemination of certain fundamental values, such as human rights and human dignity.<sup>53</sup> By increasing “the general public knowledge of international rights and duties” and promoting “a popular habit of reading and thinking about international affairs,” international law scholars build peace “in the minds of men” and women, and can prevent, and/or facilitate the settlement of, international disputes.<sup>54</sup> Therefore, the teaching and studying of international law both have a high social value, contribute to building a culture of peace, and foster peaceful and prosperous relations among nations. They can also become “a form of resistance when the very purposes of international law . . . are . . . put in jeopardy.”<sup>55</sup>

Material culture can play an important role in teaching and disseminating international law. Material culture offers new ways to teach international law and develop critical thinking about the same. The interplay between material culture and international law can be a “real eye-opener for many students:” not only can they “learn to glean historical information from the study of material culture”, but they can also perceive international law “as engaging and ongoing” and think about it critically.<sup>56</sup> International law scholars have used movies to help students understand definitions, challenges, and complexities of international law.<sup>57</sup> Nevertheless, these scholars are fully aware that the portrayal of international law in movies, although exact at times, can be conveyed in an approximate manner, thus warranting a need for critical legal assessment.<sup>58</sup> Moreover, visual depictions can be simplistic, reproducing “the hero/villain theme” rather than representing facts in an accurate way.<sup>59</sup> In addition, one has to be careful in maintaining objectivity.<sup>60</sup>

Third, material culture can also illuminate the state of the art, the promises and pitfalls of international law. Artists, reporters, filmmakers, and the creators of visual data have become increasingly interested in denouncing complex social

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<sup>53</sup> For an analogous argument in relation to law more generally, see generally David Sugarman, *Theory and Practice in Law and History: A Prologue to the Study of the Relationship Between Law and Economy from a Socio-Historical Perspective*, in *LAW, STATE AND SOCIETY* 70, 83 (Bob Fryer et al. eds., 1981).

<sup>54</sup> Elihu Root, *The Need of Popular Understanding of International Law*, 1 *AM. J. INT'L L.* 1, 2 (1907).

<sup>55</sup> D'Argent, *supra* note 50, at 418; UNESCO, *Constitution of the United Nations Educational, Scientific and Cultural Organization* (Nov. 16, 1945).

<sup>56</sup> Ernest A. Brewer & Penelope Fritzer, *Teaching Students to Infer Meaning Through Material Culture*, 84 *The Clearing House: J. Educ. Strategies, Issues & Ideas* 43, 43–45 (2011) (adding that professors can also invite students to construct a replica of material culture and/or contribute to creating a museum of artefacts relating to the (history of) international law).

<sup>57</sup> Xavier Philippe, *Les crimes internationaux vus par le cinéma: une mobilisation intuitive du droit international pénal*, in *DU DROIT INTERNATIONAL AU CINEMA* 215, 216 (Olivier Corten & François Dubuisson, eds., 2015).

<sup>58</sup> *Id.* at 218.

<sup>59</sup> John Denvir, *What Movies Can Teach Law Students*, in *LAW AND POPULAR CULTURE* 183, 191 (Michael Freeman ed., 2005).

<sup>60</sup> Gerry Simpson, *On the Magic Mountain: Teaching Public International Law* 10 *EUROPEAN J. OF INT'L L.* 70, 91 (1999) (cautioning that international law should not be taught as “the converse of an holiday brochure – brief illustrations from places we would not want to visit.”); Martti Koskeniemi, *International Law in Europe: Between Tradition and Renewal* (2005) 16 *EUROPEAN J. OF INT'L LAW* 113, 122 (contending that “[i]nternational law is burdened by kitsch” and that the concept of *jus cogens* is an example of such kitsch, being expressed in “a dead European language” with “no clear reference to this world” but “longing for such reference.”)

problems with international relevance. They have often provided critical depictions of key areas of international law.

For instance, in a recent exhibition, Chinese artist, Ai Wei Wei, wrapped the Renaissance façade of Florence’s Palazzo Strozzi in a series of orange rubber lifeboats.<sup>61</sup> Entitled *Liberò* (‘Free’), the exhibition drew attention to the fate of refugees often rescued by similar boats when they cross the Mediterranean Sea.<sup>62</sup> The display of such migration tools on the façade of a patrician building—in the form of temporary installation art—sparked intense debate.<sup>63</sup> While some critics contended that the installation of dinghies ruined the aesthetics of the city center, others welcomed the initiative as a form of engaged artistic expression in favor of the plight of refugees.<sup>64</sup> For the artist, “[r]efugees must be seen to be an essential part of our shared humanity”.<sup>65</sup> Visiting the exhibition, international lawyers cannot but reflect upon how international law protects the rights of refugees.<sup>66</sup>

In another example, Banksy, a well-known yet anonymous British street artist, painted nine graffiti on the “425-mile long barrier that separates Israel from the Palestinian territories.”<sup>67</sup> Allegedly built for security reasons, the wall has sparked controversy.<sup>68</sup> In its Advisory Opinion, the International Court of Justice held that Israel’s actions violated the International Covenant on Civil and Political Rights (ICCPR) because of their disproportion, and the International Covenant on Economic Social and Cultural Rights (ICESCR) because of their intent.<sup>69</sup> The street artist transformed the same wall into a canvas for some of his/her most celebrated works. The graffiti are thought provoking and can be interpreted in different ways. For instance, one portrays a little girl gently lifted by balloons toward the top of the wall.<sup>70</sup> Filled with wit and metaphor, the graffiti transcends language barriers and

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<sup>61</sup> Steve Scherer, *Boats Evoking Refugees Hang from Italy Palace in Ai Weiwei Installation*, REUTERS (Sept. 22, 2016), available at <https://www.reuters.com/article/us-europe-migrants-aiweiwei-italy/boats-evoking-refugees-hang-from-italy-palace-in-ai-weiwei-installation-idUSKCN11R2KC> (last visited Feb. 26, 2018).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> See generally Ai Weiwei, *The Refugee Crisis Isn’t About Refugees: It’s About Us*, THE GUARDIAN (Feb. 2, 2018), available at <https://www.theguardian.com/commentisfree/2018/feb/02/refugee-crisis-human-flow-ai-weiwei-china> (last visited Mar. 30, 2018).

<sup>66</sup> See e.g. Convention relating to the Status of Refugees, 189 U.N.T.S. 150, in force April 22, 1954, preamble (recalling the principle that “human beings shall enjoy fundamental rights and freedoms without discrimination” and considering the “concern [of the UN] for refugees and [the organization’s] endeavour[r] to assure refugees the widest possible exercise of these fundamental rights and freedoms.”); Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, in force 4 October 1967.

<sup>67</sup> Sam Jones, *Spray Can Prankster Tackles Israel’s Security Barrier*, THE GUARDIAN, (Aug. 5, 2005), available at <https://www.theguardian.com/world/2005/aug/05/israel.artsnews> (last visited Mar. 5, 2018).

<sup>68</sup> Nathaniel Berman, *The Ambivalence of Walls in the Internationalist Imagination: Legal Scandal or the Foundation of Legal Order?*, in LES MURS ET LE DROIT INTERNATIONAL 117, 117-18 (Jean-Marc Sorel ed., 2010).

<sup>69</sup> Legal Consequences of Construction of Wall in Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, at 177, 181, 201 (July 9).

<sup>70</sup> Adela H. Kim, *Banksy and the Wall*, THE HARVARD CRIMSON, (Mar. 26, 2014), available at <http://www.thecrimson.com/column/the-art-of-protest/article/2014/3/26/the-art-of-protest->

seem to advocate a process of peace among the parties. The maintenance of peace is one of the fundamental aims of international law.<sup>71</sup>

In a significant fashion, movies that have represented international crimes often highlight “the inability of law in general, and international criminal law in particular, to concretely and effectively cope with the perpetration of such crimes.”<sup>72</sup> These movies show that “such crimes are intolerable,” but also show that “[international] law seems powerless and unable to offer a satisfactory response to the same.”<sup>73</sup> They mix the idealism of international law in theory with the realism of its ineffectiveness in practice.<sup>74</sup> This is not to say that international law is useless. Certain documentaries have showed the inadequacy of certain legal responses as well as the need to reinforce international law mechanisms in equal measure. For instance, Tim Slade’s *The Destruction of Memory*<sup>75</sup> shows “the ways in which laws and policy moved in or out of step with the [deliberate] destruction” of cultural heritage, but also offers “glimmers of hope” depicting the evolution of international law and “creat[ing] an effective call to peace.”<sup>76</sup>

International lawyers themselves can use material culture to examine the state of the art, the promises, and the pitfalls of international law. For instance, the cover illustration of a recent book, entitled *International Law as a Profession*, includes the visual reproduction of a painting, *A Lawyer in his Study* by Adriaen Van Ostade.<sup>77</sup> While the painting is not particularly famous, it depicts an old white-haired lawyer reading his files.<sup>78</sup> The portrait certainly conveys the idea that (international) lawyers work long hours while spending their life in a shadowy workplace as time passes by. But the painting fails to depict the diversity of international lawyers.<sup>79</sup>

Fourth, the iconography of warfare can contribute to the illustration of the dramatic consequences of war, thus indirectly cultivating a culture of peace. In the

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banksy/ (last visited Mar. 30, 2018) (describing the graffiti depicting “[a] young girl [who] grasps onto numerous balloons, attempting to fly”).

<sup>71</sup> U.N. Charter art. 1.1 (“The Purposes of the United Nations are: 1. To maintain international peace and security . . .”).

<sup>72</sup> Philippe, *supra* note 58.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> THE DESTRUCTION OF MEMORY (Icarus Films 2016).

<sup>76</sup> Tim Slade, *The Destruction of Memory*, in ARTS & INTERNATIONAL AFFAIRS, (Jan. 21, 2017) (internal reference omitted).

<sup>77</sup> INTERNATIONAL LAW AS A PROFESSION (Jean d’Aspremont et al. eds., 2017).

<sup>78</sup> *Id.*

<sup>79</sup> Oscar Schachter, *The Invisible College of International Law*, 72 NW. U. L. REV. 217 (1977) (indicating that the “invisible college of international law” included “a fairly small community made up almost entirely of upper-class, European, French-speaking, male lawyers who knew or were related to each other”); see generally Hilary Charlesworth, *Transforming the United Men’s Club: Feminist Futures for the United Nations*, 4 TRANSNAT’L L. & CONTEMP. PROBS., 421, 422 (1994) (discussing ways to mainstream gender within the United Nations); see generally Dianne Otto, *The Exile of Inclusion: Reflections on Gender Issues in International Law Over the Last Decade*, 10 MELB. J. OF INT’L L. 11, 13 (2009) (investigating a range of gender issues in international law). On the need of more representative international courts and tribunals, see Nienke Grossman, *Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts?*, 12 CHI. J. OF INT’L L. 647, 647 (2012) (discussing the linkage between the adequate representation of women in international courts and the legitimacy of the same courts); see generally Nienke Grossman, *Achieving Sex Representative International Court Benches*, 110 AM. J. OF INT’L L. 82 (2016) (proposing methods to increase the representation of women in international courts).

twentieth century, the British War Memorials Committee commissioned the American painter John Singer Sargent (1856–1925) to document an episode of chemical warfare during World War I.<sup>80</sup> Although Sargent was regarded more for his paintings portraying high society, his oil on canvas titled *Gassed*—depicting a line of wounded and blindfolded men—struck a chord, won prizes, and “has become widely recognized as an embodiment of the pain of war.”<sup>81</sup> Pablo Picasso’s *Guernica*, a 20<sup>th</sup> century art icon,<sup>82</sup> depicts the effects of the bombing of the Basque town of Guernica by the German air force in 1937, during the Spanish Civil War of 1936–39.<sup>83</sup> Like other visual depictions of war crimes, this great painting constitutes a powerful anti-war protest<sup>84</sup> and indirectly contributes to fostering a culture of peace.<sup>85</sup>

Last, material culture in general, and the visual arts in particular, can play a role in international dispute settlement. Material culture can document and provide evidence of historical events of international relevance.<sup>86</sup> It can also constitute the object (*petitum*) or the reason underlying a claimant’s cause of action (*causa petendi*) of given international law disputes.<sup>87</sup> Irrespective of its artistic merit, such material culture enables international law scholars and practitioners to “encounter the past at first hand.”<sup>88</sup> It can contribute to the making of international law, raising consciousness, triggering action, and influencing international lawyers.

Although the interplay between material culture and international law as a field of study is a rich and promising one, international lawyers have rarely engaged with the material traces and forms of law. Only recently have they started dealing with material culture in a more intense fashion.<sup>89</sup> Some have foregrounded material culture for theoretical purposes.<sup>90</sup> Others have focused on the promising and

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<sup>80</sup> ONE HUNDRED YEARS OF CHEMICAL WARFARE: RESEARCH, DEPLOYMENT, CONSEQUENCES edited by Bretislav Friedrich, Dieter Hoffmann, Jürgen Renn, Florian Schmalz, Martin Wolf (Springer 2017) 176 (adding that “Sargent visited the Western front . . . [in] 1918”).

<sup>81</sup> ‘Gassed’, by John Singer Sargent, THE GUARDIAN (Nov. 12, 2008), available at <https://www.theguardian.com/world/2008/nov/13/gassed-john-singer-sargent> (last visited Mar. 4, 2018).

<sup>82</sup> John Corbin, *Images of War: Picasso’s Guernica*, 13 VISUAL ANTHROPOLOGY 1, 1 (1999).

<sup>83</sup> *Id.* at 1 (noting that *Guernica* “is a painting of violence rendered with violence, full of strong contrasts, sharp angles, broken shapes.”).

<sup>84</sup> *Id.* at 2 (reporting that “most interpreters regard *Guernica* as an anti-war protest expressed in open, universal terms.”).

<sup>85</sup> Paula Newton & Thom Patterson, *The Girl in the Picture: Kim Phuc’s Journey from War to Forgiveness*, CNN (Aug. 20, 2015), available at <http://www.cnn.com/2015/06/22/world/kim-phuc-where-is-she-now/index.html> (last visited Mar. 3, 2018) (noting that the image of a 9-year-old girl running for her life during the Vietnam War has crossed boundaries and allegedly contributed to hasten the end of the war.).

<sup>86</sup> ARTFUL ARMIES, BEAUTIFUL BATTLES: ART AND WARFARE IN EARLY MODERN EUROPE 4 (Pia Cuneo ed., Brill Pub. 2002).

<sup>87</sup> See NOUT VAN Woudenberg, STATE IMMUNITY AND CULTURAL OBJECTS ON LOAN 443 (Martinus Nijhoff Pub. 2012).

<sup>88</sup> Prown, *supra* note 11, at 3.

<sup>89</sup> See generally LUIS ESLAVA, LOCAL SPACE GLOBAL LIFE: THE EVERYDAY OPERATION OF INTERNATIONAL LAW AND DEVELOPMENT (Cambridge Univ. Press 2015); Annelise Riles, *Models and Documents: Artifacts of International Legal Knowledge*, 48 INT’L & COMP. L. Q. 805 (1999).

<sup>90</sup> International lawyers have analogized the debate on the functioning of international courts and tribunals to some architectural debate. See Dinah Shelton, *Form, Function, and the Powers of International Courts*, 9 CHI. J. OF INT’L L. 537, 537 (2009) (on the debate raised by the construction of the first

emerging area of international cultural law.<sup>91</sup> Material culture has also been used as evidence and for procedural purposes.<sup>92</sup>

This section has briefly shown that such interplay between material culture and international law constitutes a rich field for analysis. Not only has international law inspired some artists, but material culture has interacted with international law in a variety of ways. First, material culture can make international law accessible to a wide audience. Second, material culture can contribute to the teaching and dissemination of international law. Third, it can illuminate the current trajectories, promises, and pitfalls of international law. Fourth, it can contribute to building a culture of peace, which is one of the fundamental purposes of international law. Finally, material culture can play a role in international dispute settlement, constituting evidence or the object (*petitum*) or reason underlying an international dispute (*causa petendi*).

### 3. The Pitfalls of Using Material Culture

There are some research limitations associated with using material culture in relation to the study and critical assessment of international law. This section identifies five principal pitfalls, but the list is not a closed one, and other criticisms are of course possible. First, international law and material culture have been seen as separate fields of study. Second, the artistic/political value of material culture can clash with the historical/legal value of the same. Third, an object can give rise to different interpretations, depending on the “cultural matrices” of the interpreters. Fourth, interdisciplinary methods can complement rather than supplant more traditional legal methods. Finally, in some instances, the use of material culture can re-politicize legal issues. Let us now examine each of these arguments more in detail.

First, in what has become a general fragmentation of knowledge and (over)specialization of fields, international law as a discipline and material culture studies often do not speak to each other. The implicit assumption seems to be that

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skyscrapers in Chicago); Eyal Benvenisti, *Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders*, 107 AM. J. OF INT'L L. 295, 295, 298 (2013) (analogizing state sovereignty to “a small apartment in one densely packed high-rise” and the international community to “a global condominium”); VALENTINA VADI, *PROPORTIONALITY, REASONABLENESS AND STANDARDS OF REVIEW IN INTERNATIONAL INVESTMENT LAW AND ARBITRATION* (Edward Elgar Pub. 2018) (analogizing treaty makers to city planners and arbitrators to architects).

<sup>91</sup> See Hilary Charlesworth, *Human Rights and the UNESCO Memory of the World Programme*, in CULTURAL DIVERSITY, HERITAGE AND HUMAN RIGHTS: INTERSECTIONS IN THEORY AND PRACTICE 21 (Michele Langfield et al. eds., Routledge 2010).

<sup>92</sup> See Valentina Vadi, *International Law and the Uncertain Fate of Military Sunken Vessels*, 19 IT. Y.B. OF INT'L L. 253 (2009) (detailing how sparse underwater cultural heritage, *in casu*, coins, enabled the judge to ascertain that a shipwreck was the *Mercedes*, a Spanish galleon). See also Ana Filipa Vrdoljak, *The Criminalisation of the Intentional Destruction of Cultural Heritage* in FORGING A SOCIO-LEGAL APPROACH TO ENVIRONMENTAL HARMS: GLOBAL PERSPECTIVES 237 (Tiffany Bergin & Emanuela Orlando, eds., Routledge 2017).

“Several indictments brought before the ICTY for the deliberate destruction or damage of cultural property of religious or ethnic groups included counts of persecution and genocide. Such acts have been used to establish the mens rea of a defendant, that is, the discriminatory intent required for proving genocide and persecution.”

the different branches of learning are separate. International lawyers study, interpret and apply international law that governs international relations, and promote a range of objectives including human rights, justice, peace, and prosperity.<sup>93</sup> Material culture studies explore the relationship between people and objects, develop ideas and represent them through a range of varied techniques, materials, and processes.<sup>94</sup> While international law has a normative nature,<sup>95</sup> material culture studies empower individuals to develop creativity. Both the discipline of international law and material culture studies foster critical thinking, but each one does so using different languages and methods. While the discipline of international law relies mainly on written language, material culture studies use all of our senses. International lawyers generally prefer linear, consolidated, and black letter approaches to questions. Material culture uses multi-form techniques.

International lawyers do research in an individual, standardized, and text-driven fashion.<sup>96</sup> They “rel[y] upon and produc[e] a wealth of written material.”<sup>97</sup> They relate predominantly to international law through written legal sources such as “[c]ases, treaties and volumes of academic writing.”<sup>98</sup> They often “feel such texts are [their] major project and output.”<sup>99</sup> International law books rarely contain images.<sup>100</sup> When they do, international lawyers use images to illustrate a point; they rarely consider them as a source of information about international law.<sup>101</sup> Some scholars have hypothesized that “the separation and closure of [international] law stands at the basis of its power,” suggesting that international law has “imperial claims” and “presents itself as a discourse about all other discourses.”<sup>102</sup> Accordingly, international law “must either digest the non-legal and transform it

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<sup>93</sup> MARY ELLEN O’CONNELL, *THE POWER AND PURPOSE OF INTERNATIONAL LAW: INSIGHTS FROM THE THEORY AND PRACTICE OF ENFORCEMENT* (2008) (arguing that “International law supports order in the world and the attainment of humanity’s fundamental goals of advancing peace, prosperity, human rights, and environmental protection.”)

<sup>94</sup> [Various authors], [Editorial], 1 *JOURNAL OF MATERIAL CULTURE* (1996) 5-14, 5 (arguing that “The study of material culture may be most broadly defined as the investigation of the relationship between people and things irrespective of time and space...”) and 13 (suggesting that “As a field, cultural studies has been immensely productive precisely because it lacked constraints on what should be investigated and how phenomena should be conceptualized.”)

<sup>95</sup> See generally Ana Filipa Vrdoljak and Federico Lenzerini (eds) *INTERNATIONAL LAW FOR COMMON GOODS: NORMATIVE PERSPECTIVES ON HUMAN RIGHTS, CULTURE AND NATURE* (2014).

<sup>96</sup> Jessie Hohmann, *Opium as an Object of International Law: Doctrines of Sovereignty and Intervention*, in 5 *INTERNATIONAL LAW AND... SELECT PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW* 277 (August Reinisch et al. eds., Hart Pub. 2016) (noting that “[t]he study of international law is highly text-based.”).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* (“[C]ases, treaties, and volumes of academic writing’ are the legal sources through which most of us working in international law relate to the subject, and, at times we might come to feel that these texts are our major project and output.”).

<sup>99</sup> *Id.*

<sup>100</sup> But see generally Ana Filipa Vrdoljak, *International Law, Museums, and the Return of Cultural Objects*, 33 *MUSEUM ANTHROPOLOGY* 75, 75 (2006).

<sup>101</sup> But see KATJA LUBINA, *CONTESTED CULTURAL PROPERTY: THE RETURN OF NAZI SPOILATED ART AND HUMAN REMAINS FROM PUBLIC COLLECTIONS* (Josh Moll & Sytze Steenstra eds., 2009) (In describing the photo on the back of the book cover, it was noted that “stamps and stickers on the back of paintings often provide relevant information for the reconstruction of a painting’s whereabouts during the years 1933–1945.”).

<sup>102</sup> Douzinas, *supra* note 44, at 354.



into legality, or it must reject it.”<sup>103</sup> International law’s vision is that of an ordered, coherent, and stable system, while material culture is “anarchic, open and free.”<sup>104</sup> At the same time, “law has always had a visual policy, it has always understood the importance of the governance of images for the maintenance of the social bond.”<sup>105</sup>

International lawyers follow certain formal aesthetics.<sup>106</sup> In order to write persuasive legal arguments, international lawyers follow criteria of brevity, clarity, and consistency and carefully select words, arguments, and sources. Texts visually represent data and have visual aspects. Thus, international lawyers consciously make a series of informed choices about how to arrange their texts, including the font, margins, and headings to be used. The selection of these elements contributes to a certain “functional aesthetics.”<sup>107</sup> Some images also frequently appear on the covers of international law books.<sup>108</sup> International lawyers, scholars suggest, “use the cover page of their international law books, not only to illustrate their work but, more fundamentally, to attract readers into a game.”<sup>109</sup> In fact, the readers are invited to “fin[d] an explanation for the cover of the book.”<sup>110</sup> While some international lawyers build “explanatory bridges” between the imagery of the cover and the content of the book within the book itself, others provide “space for imagination.”<sup>111</sup>

However, even though some imagery has started to appear in international law works, a traditional discomfort with material culture still pervades international law. As a matter of fact, “modern (abstract) painting . . . has proved to be the greatest source of imagery in recent years, especially for books which . . . presuppose a more theoretical or critical perspective on international law.”<sup>112</sup> More generally, there is a traditional uneasiness of law scholars with using images.

Perhaps, law’s anxiety about the power of images has a strong philosophical, religious, and cultural genealogy. Since Plato, the ancient Greek philosopher who famously considered images as mere distortions of ideas, arguments against images have permeated philosophical thought for centuries and characterized certain religious beliefs.<sup>113</sup> Jewish, Islamic, and Christian iconoclasts prohibit images based on similar arguments.<sup>114</sup> According to this iconophobic tradition, the text is what

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<sup>103</sup> *Id.* at 355.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 362.

<sup>106</sup> Karl N. Llewellyn, *On the Good, the True, the Beautiful, in Law*, 9, U. CHI. L. REV. 224, 228 (1942) (“Structured beauty becomes thus the aesthetic goal—an intellectual architecture, clean, rigorous; above all, carried through in sharp chiselling to body out the predetermined plan, in every vault, in each line, into each angle.”).

<sup>107</sup> *Id.* at 248.

<sup>108</sup> See JEAN D’ASPREMONT & ERIC DE BRABANDERE, *THE PAINTINGS OF INTERNATIONAL LAW* (Sept. 27, 2016), Forthcoming in *INTERNATIONAL LAW’S OBJECTS* (Jessie Hohmann & Daniel Joyce eds., 2018).

<sup>109</sup> *Id.* at 3.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 4.

<sup>112</sup> *Id.* at 5.

<sup>113</sup> Douzinas, *supra* note 44, at 353-54.

<sup>114</sup> Finbarr Barry Flood, *Idol-Breaking as Image-Making in the ‘Islamic State’*, RELIGION AND SOCIETY: ADVANCES IN RESEARCH 7 (2016) 116-138, 117 (noting that “The erasure of the materials of memory is common to many historical episodes of iconoclasm” and that “The standard rationale for this . . . is the rejection of shirk, beliefs or practices considered idolatrous or polytheistic by virtue

really matters, and pictures are a distraction at best, and a deviation at worst, from the sacred text.<sup>115</sup> This philosophic, religious, and cultural opposition to images has culturally influenced the field of international law. International law coalesced in its modern form at the end of the sixteenth century, “[a]s the icons were excluded from churches, figures and imagery were banned from the law.”<sup>116</sup> For early modern international lawyers, “[t]he word and the text” became “higher, spiritual expressions of the law.”<sup>117</sup> The image is perceived as “too sensual[,]” “contingent[,] and transient” to complement the “law as the exercise of reason.”<sup>118</sup> Yet, the traditional separation between the discipline of international law and material culture studies does not mean that international lawyers should not be intellectually open in “an on-going process of self-questioning about the issues [they are] exploring and the approaches [they] adopt to do so.”<sup>119</sup>

In turn, disciplines such as art history, archaeology, and material culture studies have developed distinctive methods and theoretical approaches to investigate objects.<sup>120</sup> These disciplines study artifacts, including diverse elements such as sculpture, crafts, and others, and consider them as an expression of a given civilization. Examining material culture unveils “an entire cultural universe . . . waiting to be discovered.”<sup>121</sup> Objects can be time capsules, which open new perspectives on the past.

The traditional epistemic separation between the discipline of public international law and material culture studies raises the question as to whether interdisciplinary approaches can be envisaged, and if so, whether they are desirable. International lawyers, archaeologists, and art historians ask different questions when examining the same artifacts. They have different aims, objectives, and methods. Therefore, questions arise as to whether methods of object analysis can and/or should migrate from one field to another. Moreover, without some methodological caution, there is a risk of epistemological misappropriation, as international lawyers are not trained in examining objects.

Second, context matters. Art historians have cautioned that there is a complex linkage between art and history, between cultural production and historical

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of their deviation from the worship of one immaterial and unrepresentable God.”) and 119 (highlighting the “shift from image to word as a kind of aniconic revolution, comparable to that which took place in sixteenth-century Europe, when Protestant reformists expelled the images from the churches.”)

<sup>115</sup> Douzinas, *supra* note 44, at 364–65 (highlighting that for Tertullian, “the greatest foe of icons and the systematizer of the arguments of the iconoclasts”, “idolatry is the [principal crime of humankind] *principale crimen generis humani*.”).

<sup>116</sup> Costas Douzinas, *The Legality of the Image*, 63 MOD. L. REV. 813, 814 (2000).

<sup>117</sup> Douzinas, *supra* note 44, at 366.

<sup>118</sup> *Id.* (also adding that “law loves and fears images.”); Richard K. Sherwin, *Visual Jurisprudence*, 57 N.Y.L. SCH. L. REV. 11, 19 (2012–2013) (pointing out the “deeply rooted love/hate relationship with visual images.”); Douzinas, *supra* note 44, at 366 (noting that “law is the combination of reason and necessity, art of sensuality and freedom.”).

<sup>119</sup> Sarah Nouwen, *Scholarship in International Law: The Challenge of Relevance without Arrogance*, ESIL NEWSLETTER, June 2017, at 3.

<sup>120</sup> Prown, *supra* note 11, at 7.

<sup>121</sup> *Id.* at 6.

reality.<sup>122</sup> Artworks provide less neutral cultural evidence than other artifacts.<sup>123</sup> One should be cautious when interpreting material culture as historical evidence.<sup>124</sup> In fact, one should try to understand given artifacts in the light of their historical, political, and cultural context. As the art sociologist Arnold Hauser points out, “artists always work in the midst of a social situation.”<sup>125</sup> One should ascertain whether artists had direct access to the given event; as well as whether there were any artistic or ideological interventions on the part of the artist and/or his or her patron.<sup>126</sup> Visual artifacts require critical engagement in order to become meaningful.<sup>127</sup> Unavoidably, material culture does not merely reflect history, nor does it remain separate from politics. The artistic and political value can clash with the historical and legal value.

The same historical events can and have been visually rendered in diametrically opposite ways depending on the context in which the artist lived and worked. For instance, the French painter Jacques Louis David (1748–1825) depicted Napoleon Bonaparte (1769–1821) as a military hero.<sup>128</sup> As the painter of the imperial court, he completed several versions of *Napoleon Crossing the Alps*, depicting Napoleon riding an unruly horse in rather celebratory tones.<sup>129</sup> These large paintings became tools of propaganda, glorifying Napoleon’s military successes and helping to legitimize his rule.<sup>130</sup> Rather than providing a realistic portrait of Napoleon, David idealized his features emphasizing his role as a military leader.<sup>131</sup>

From a completely different standpoint, the Spanish painter Francisco Goya (1746–1828) depicted Napoleon’s troops invading Spain, in a famous series of prints named *The Disasters of War* (*Los desastres de la guerra*)<sup>132</sup> and a painting, *The*

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<sup>122</sup> JONATHAN HARRIS, *ART HISTORY—THE KEY CONCEPTS*, 23 (Routledge 2006) (noting that “Since the early twentieth century, though particularly after the Second World War, art history in this broad sense became an academic discipline”); Jennifer Doody, *The Link between Art and History*, HARVARD GAZETTE, (Apr. 19, 2016), available at <https://news.harvard.edu/gazette/story/2016/04/the-link-between-art-and-history/> (last visited Feb. 8, 2018) (reporting the opinion of a history student: “It’s not very interesting to just read about past events. But when you . . . see the art made by people actually living in that time, when you think about it and talk about it or even re-create a work by drawing it, you get a more in-depth understanding of that time and what people were going through. We get to see the context, and really experience it ourselves.”).

<sup>123</sup> Prown, *supra* note 11, at 12.

<sup>124</sup> PIA F. CUNEO, *Introduction*, ARTFUL ARMIES, BEAUTIFUL BATTLES, 3, 4 (2001).

<sup>125</sup> Arnold Hauser, *The “L’Art pour l’Art” Problem*, 5 CRITICAL INQUIRY 425, 427 (1979).

<sup>126</sup> See CUNEO, *supra* note 119, at 7.

<sup>127</sup> See *id.*

<sup>128</sup> See generally ODILE NOUVEL-KAMMERER, *SYMBOLS OF POWER: NAPOLEON AND THE ART OF THE EMPIRE STYLE, 1800-1815* (Harry N. Abrams 2007).

<sup>129</sup> Sarah Cokeley, *Brushes with Conflict*, MILITARY HISTORY, (Mar. 2015), at 52–57.

<sup>130</sup> MARTYN LYONS, *NAPOLEON BONAPARTE AND THE LEGACY OF THE FRENCH REVOLUTION 178* (Palgrave 1994) (noting that “[i]mperial propaganda was designed to praise the achievements of France and of the reign”).

<sup>131</sup> See N.J. Cull, *David, Jacques-Louis (1748–1825)*, in N. J. CULL ET AL., *PROPAGANDA AND MASS PERSUASION: A HISTORICAL ENCYCLOPEDIA, 1500 TO THE PRESENT* (1st ed., 2003) (noting that “[u]nder Napoleon (1769–1821) David used his skills to develop a heroic image of the emperor. Strong classical echoes resurfaced in his painting of *Napoleon crossing the Alps*, which pictures the emperor, with billowing cloak, astride a rearing horse”).

<sup>132</sup> Francisco Goya, *Disasters of War*, 1810–20.

*Third of May 1808 (El tres de mayo de 1808)*.<sup>133</sup> In both the prints and the painting, Goya took a “radically new look at war, ‘where heroes have vanished and only human beings remain.’”<sup>134</sup> Rather than focusing on military leaders, Goya painted the victims of war, individual soldiers, and civilians. In the painting, *The Third of May 1808 (El tres de mayo de 1808)*, Goya depicted “an indiscriminate killing of civilians by French soldiers in reprisal for a guerrilla attack the previous day.”<sup>135</sup> As aptly noted by a legal scholar:

The soldiers who are about to execute the young man look at their target but their faces are hidden from us. The witnesses cover their eyes from the violence to come; the eyes of the dead are closed. . . . Only the central figure [who is the young man soon to be executed] returns the gaze of the firing squad.<sup>136</sup>

Art historians have raised several questions in this context: “[h]ow would the man in front of the firing feel in Goya’s . . . painting?”<sup>137</sup> “Can we tell who is more powerful and who has lost power in each image?”<sup>138</sup> “What political messages was Goya delivering in his large-scale painting?”<sup>139</sup> There are not set answers to the questions, as people have “different attitude[s] toward fear, anger, danger, hatred, war, violence, and death.”<sup>140</sup> Certainly, the painting displays “a strong and powerful understanding” of war and “the human condition.”<sup>141</sup> The young man soon to be executed appears as a point of light in the midst of darkness. Whether he has fear, one cannot tell. For some, Goya’s painting “was intended to arouse anger and hatred on the part of the Spanish viewers.”<sup>142</sup> For others, the painting “call[s] for an examination of the essential nature of war: power, aggression, chaos, and loss.”<sup>143</sup> From an international law perspective, the painting seems to call for the respect of the law of war in particular, and the prevention of war in general.

The broad brushes used by Goya convey an impression of rushed realism; but the Spanish government commissioned the painting after the expulsion of the French.<sup>144</sup> Despite the formal commission, the painting conveys a sense of personal emotion and political resistance to the events it portrays; it was Goya who proposed

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<sup>133</sup> Francisco Goya, *Third of May 1808* (oil on canvas), Museo del Prado, Madrid, 1814; David A. Bell, *Total War*, MILITARY HISTORY 38, 47 (2007) (noting that the “atrocities . . . drove [Goya] to produce a series of . . . powerful etchings titled *The Disasters of War*, which . . . exposed the horrors of war in a manner rarely before seen in European art”).

<sup>134</sup> Paul Bouvier, “Yo lo vi”: Goya Witnessing the Disasters of War: An Appeal to the Sentiment of Humanity, 93 INT’L REVIEW OF THE RED CROSS, 1107, 1133 (2011).

<sup>135</sup> Arthur C. Danto, *Surface Appeal*, THE NATION (Jan. 11, 2007), available at <https://www.thenation.com/article/surface-appeal/> (last visited Mar. 5, 2018).

<sup>136</sup> Desmond Manderson, *Klimt’s Jurisprudence—Sovereign Violence and the Rule of Law*, 35 OXFORD J. LEGAL STUD. 515, 534 (2015).

<sup>137</sup> Alice Arnold, *Confronting Violence through the Arts: A Thematic Approach*, 58:4 ART EDU. 20 (2005).

<sup>138</sup> *Id.* at 21.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 22.

<sup>141</sup> *Id.* at 20.

<sup>142</sup> Danto, *supra* note 130.

<sup>143</sup> Arnold, *supra* note 132, at 24.

<sup>144</sup> KENNETH CLARK, LOOKING AT PICTURES 132, 136 (1968).

the painting of these dramatic events.<sup>145</sup> Moreover, Goya's anti-war prints were published only thirty five years after his death, because their account of the brutality of war "[was] constructed as an assault on the sensibility of the viewer" and they were considered unpatriotic in their time.<sup>146</sup>

Third, the cultural perspective of the interpreter needs to be considered. Material culture can give rise to different interpretations, depending on the "cultural matrices" of the interpreters.<sup>147</sup> Those international lawyers willing to engage in material culture to investigate their field are products of different cultural contexts.<sup>148</sup> Can interpreters overcome their own cultural assumptions and "interpret evidence objectively in terms of the beliefs of the individuals and the society that produced that evidence?"<sup>149</sup> Arnold Hauser has argued that "once we become aware of the problem [of perspective] we can struggle against subjectivity, against individual and class interests, and can move toward greater objectivity."<sup>150</sup>

Yet, as the writer Susan Sontag put it, perspective matters: instead of seeing the carnage of war, and thus uniting to prevent it, for "those who are sure that right is on one side, oppression and injustice on the other, and that the fighting must go on, what matters is precisely who is killed and by whom. . . . To the militant, identity is everything."<sup>151</sup> In other words, material culture in the form of images of war can "vivify the condemnation of war."<sup>152</sup> However, as Sontag aptly cautions, "to those who in a given situation see no alternative to armed struggle, violence can exalt someone subjected to it into a martyr or a hero."<sup>153</sup>

Therefore, it is crucial to acknowledge that both the discipline of international law and material culture studies embody some subjectivity. In fact, the process of interpretation is fraught by indeterminacy. How can interpreters cope with subjectivity? On the one hand, one should be aware of her own perspective to ideally neutralize possible bias and strive for objectivity, as Hauser suggested.<sup>154</sup> On the other hand, there is a risk that material culture re-politicizes issues that international law seeks to transform into legal matters.

Fourth, material culture studies cannot offer the sole, let alone the ultimate lens of analysis of international law as a field of study. We cannot acquire complete access to international law through material culture only. Rather, "[e]xternal information—that is, evidence drawn from outside the object . . . plays an essential role in the process."<sup>155</sup> Interdisciplinary methods can complement rather than supplant more traditional legal methods.<sup>156</sup> Therefore, a "*dialogue between methods*"

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<sup>145</sup> *Id.*

<sup>146</sup> Susan Sontag, *Looking at War*, THE NEW YORKER (Dec. 9, 2002), *available at* <https://www.newyorker.com/magazine/2002/12/09/looking-at-war> (last visited Mar. 5, 2018).

<sup>147</sup> Prown, *supra* note 11, at 6.

<sup>148</sup> *Id.* at 4.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* (referring to ARNOLD HAUSER, *SOCIOLOGY OF ART* 272 (Berel Lang & Forrest Williams eds., 1972)).

<sup>151</sup> Sontag, *supra* note 141, at 4.

<sup>152</sup> *Id.* at 5.

<sup>153</sup> *Id.* ("Photographs of an atrocity may give rise to opposing responses: a call for peace; a cry for revenge; or simply the . . . awareness . . . that terrible things happen.").

<sup>154</sup> Hauser, *supra* note 120.

<sup>155</sup> Prown, *supra* note 11, at 6.

<sup>156</sup> Woodward, *supra* note 17, at 361.

should be promoted.<sup>157</sup> If international law scholars adopt approaches based on material culture studies, such methods should be part of a larger methodological tool kit.<sup>158</sup>

For instance, going back to the case study at the beginning of this article, Grotius' chest of books was a mere container of books. An examination of the chest does not indicate which books Grotius was reading in prison. Rather, it merely confirms that Grotius was reading books during his imprisonment. The chest of books is a starting point; further investigation on the early modern origins of international law requires an in-depth analysis not only of material culture, but also of written sources and historical context. In particular, Grotius' letters to his relatives shed light on the content of the book chest. Grotius' references also contribute to mapping his intellectual landscape. Investigating the historical period in which Grotius lived can provide additional elements in investigating his life, worldview, and work.<sup>159</sup> Therefore, using multiple methods and sources can be a promising way to investigate international law and its history.

Finally, in certain instances, the use of material culture can politicize the discipline of international law. International law is often criticized for being more political than other legal fields and for lacking enforcement mechanisms similar to those of domestic legal systems.<sup>160</sup> Some international relations scholars even question whether international law is really law, or whether it rather reflects power politics.<sup>161</sup> According to this view, international law is an arm of politics, and the legal character and effectiveness of international law remains contested.<sup>162</sup>

This article certainly does not endorse this view; rather, it supports the view that international law is a legal system that aims to actualize the common interest of the international community as a whole.<sup>163</sup> Accordingly, international law aims at governing relations among nations and promoting fundamental values such as human rights, justice, peace, and prosperity. The proliferation of international law instruments, international dispute settlement mechanisms, and international legal scholarship show that there is some faith in the system. The juridification of international relations has implied a gradual shift from power politics to international law. In fact, international law aims at replacing power politics, by providing a legal framework that is binding on states. Most states comply with international law and wish to be considered as reliable players in the system. While municipal systems may be more structured systems, they are not necessarily better systems.

Against this background, one may wonder whether any politicization of the field, driven by the use of material culture, can be self-defeating, pointless, and even harmful. Material culture seldom offers a complete picture of events, rather, only a selective one. Therefore, at least in certain cases, scrutinizing international law

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<sup>157</sup> *Id.*

<sup>158</sup> See Prown, *supra* note 11, at 5.

<sup>159</sup> See *supra* Introduction.

<sup>160</sup> See Joyce, *supra* note 33, at 232.

<sup>161</sup> See *id.*; see generally Martti Koskenniemi, *The Politics of International Law*, 1 EUR. J. INT'L L. 4, 4-32 (1990); Martti Koskenniemi, *The Politics of International Law – 20 Years Later*, 20 EUR. J. INT'L L. 7, 7-19 (2009).

<sup>162</sup> See Joyce, *supra* note 33, at 232.

<sup>163</sup> Philip Allot, *The Concept of International Law*, 10 EUR. J. INT'L L. 31, 37 (1999).

through the lens of material culture risks inserting an excessive level of subjectivity in international legal discourse. In such contexts, the use of material culture in international legal discourse can defeat the aim of international law of providing legal rather than political solutions to given issues. For instance, there is a risk that media coverage directs international legal responses and that “international legal agendas . . . could come to depend too greatly on the priorities and biases of the media.”<sup>164</sup> There is a risk that the demands of international justice are subjected to a phenomenon known as “trial by media.”<sup>165</sup> The fact that “media coverage of conflict can . . . contribute to the failure of [negotiations and] international legal responses in certain cases”<sup>166</sup> suggests that in such cases the use of material culture can be harmful. In certain cases, media coverage can defeat diplomatic efforts, politicize issues, and lead to the escalation of conflict.

The interplay between international law as a field of study and material culture has not been properly addressed yet. However, such a gap in legal literature does not mean that the issue is pointless or irrelevant.<sup>167</sup> Gaps in the literature do not necessarily indicate whether a question is relevant or not. Gaps in the literature can be a matter of time. Circumstances change and may require new thinking and scholarly attention. Moreover, if a topic has been understudied, research in that field can be promising exactly because it can contribute something new to the available state of the art. The question as to whether a given research topic has relevance and/or has traction is a very important question that has to be addressed by the researcher at a very early stage of her investigation. However, the quality of a given research question is not necessarily linked to quantity of previous studies in the field. In any case, the interplay between international law and material culture is attracting the growing attention of scholars and practitioners as shown by some recent scholarship.<sup>168</sup> And it seems relevant because it can contribute to the teaching of international law and its critical assessment. And international law is a relevant field of analysis.

In conclusion, examining international law through the lens of material culture presents a number of risks. The discipline of international law and material culture studies have been traditionally perceived as separate branches of knowledge. The artistic and political value of material culture can clash with its historical/legal value. Interpreters may interpret material culture differently based on their cultural background. Material culture also risks further politicizing international law. In sum, there are risks of “bias and distortion,” as well as “simplification [and] amplification.”<sup>169</sup> This does not mean that the interplay between international law and material culture should automatically be discarded; rather, such assessment should be conducted on a case-by-case basis.

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<sup>164</sup> Joyce, *supra* note 33, at 231.

<sup>165</sup> *Id.* at 233.

<sup>166</sup> *Id.* at 231.

<sup>167</sup> *But see* Nouwen, *supra* note 114 (“How can a gap in the literature lead to a relevant question if the literature itself is irrelevant? Are we not just filling a wall of irrelevance?”).

<sup>168</sup> *See generally* INTERNATIONAL LAW’S OBJECTS (Jessie Hohmann & Daniel Joyce eds., forthcoming Sept. 2018); THE ARTS AND THE LEGAL ACADEMY: BEYOND TEXT IN LEGAL EDUCATION (Zenon Bankowski, et al., eds., 2013).

<sup>169</sup> Joyce, *supra* note 33, at 234.

#### 4. Critical Assessment

The traditional lack of reflection on the role of material culture in international law as a field of study does not necessarily correspond to lack of relevance; on the contrary, international law and material culture have interacted in a variety of ways for centuries.<sup>170</sup> On the one hand, artists have long depicted events of international legal history for artistic, documentary, and even political reasons. Moreover, material culture studies have recently taken an international law turn.<sup>171</sup> Some artists have paid increasing attention to a number of international law concerns, responding to the events of their time through art.<sup>172</sup> By doing so they can influence or help shape international public opinion by the art they produce. For instance, Banksy's graffiti portraying a girl lifted by balloons toward the top of the wall is featured on the book cover of a recent monograph on the international law of occupation.<sup>173</sup> The traditional dialogue between material culture and international legal phenomena has intensified.

On the other hand, international lawyers have become increasingly fascinated by material culture and the visual arts. In a “visually driven era, . . . the visual dimension of law and the normative power of the image” have received increasing attention.<sup>174</sup> “[I]nternational law has a rich existence in the world,” and international lawyers have started investigating the relevance of given objects to the same.<sup>175</sup> Investigating international law through the lens of material culture demonstrates “the centrality of [the former] to the lives [of people],” and illuminates “the way [it] penetrates and intervenes in multiple aspects of each state's sovereignty.”<sup>176</sup> For international lawyers, what matters is not the aesthetic quality of the object, but what that object says about international law.

The interaction between material culture and international law takes place in different ways. First, certain pieces of artworks have had a long-lasting influence on international lawyers. For instance, Mr. Advocate General Ruiz-Jarabo Colomer referred to Goya's *Third of May 1808* in an Opinion on the applicability of the Brussels Convention and in relation to the question of whether the privilege of State

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<sup>170</sup> See, e.g. Jocelyn Penny Small, *Time in Space: Narrative in Classical Art*, 81 ART BULLETIN 562, 562, 568 (1999) (noting how Greek vases depicted wars and the Trajan's Column, in Rome, Italy, provides a visual history of the wars between the Romans and Dacians, a civilization in what is now Romania).

<sup>171</sup> Joyce, *supra* note 33, at 241 (noting the turn to international law within the media); Eva Brems and Hilde Van Gelder, *Engaged Visual Art as a Tool for Normative Renewal in International Human Rights*, in INTERNATIONAL LAW AND . . . 463 (Reinisch et al., eds. 2016) (noting that since the beginning of the new millennium a ‘legal turn’ has taken place within the visual arts. Artists, art theoreticians, art critics and curators have paid increasing attention to human rights.).

<sup>172</sup> Brems & Van Gelder, *supra* note 166 (noting that “[c]oncerned about the numerous problems posed by the global crisis [artists, art theoreticians, art critics and curators] have sought a valid means to express social commitment. Since human rights law is a dominant language for talking about injustice, it has proven highly inspirational”).

<sup>173</sup> AEYAL GROSS, *THE WRITING ON THE WALL—RETHINKING THE INTERNATIONAL LAW OF OCCUPATION* (2017).

<sup>174</sup> Daniel Joyce & Gabrielle Simm, *Zero Dark Thirty: International Law, Torture and Representation*, 3 LONDON REV. INT'L L. 295, 295 (2015).

<sup>175</sup> Hohmann, *supra* note 92, at 277.

<sup>176</sup> *Id.* at 287.



immunity from legal proceedings is compatible with the system of that Convention.<sup>177</sup> Analogously, Goya's *The Disasters of War* has been discussed in relation to humanitarian action.<sup>178</sup> A large tapestry reproduction of Picasso's *Guernica* has been exhibited in the United Nations building in New York City since 1985, constituting a visual reminder of the organization's responsibility to maintain peace.<sup>179</sup> Not only can material culture make international law open and accessible to a wide audience and have a didactic value, but it can illuminate the state of the art and the promises and pitfalls of the discipline. By depicting the dramatic effects of war, it can indirectly foster a culture of peace. The recognition that some forms of material culture constitute world heritage contributes to developing a sense of unity and common destiny in the international community.

Second, material culture can be the object of international regulation and/or play a role in international dispute settlement. Given the growing expansion of international law, the discipline has increasingly governed elements of material culture from artworks to landscapes,<sup>180</sup> from world heritage sites<sup>181</sup> to underwater cultural heritage,<sup>182</sup> and so on. For instance, international copyright law governs the legal relationship between authors and inventors and their creations at the international level.<sup>183</sup> International cultural law is the branch of international law that governs different types of cultural heritage.<sup>184</sup> The international protection of cultural heritage, which includes some qualified forms of material culture, can promote peaceful relations among nations. By recognizing the international public value of cultural creations, international law can foster mutual understanding, dialogue, and cooperation among civilizations thus contributing to the prevention of war, and the promotion of peaceful relations among nations.<sup>185</sup> Other branches of international law have also dealt with aspects of material culture, from

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<sup>177</sup> Case C-292/05, *Lechouritou v. Dimosio*, 2007, E.C.R. I-01519, Opinion of Mr. Advocate General Ruiz-Jarabo Colomer delivered on Nov. 8, 2006, European Court Reports, para. 2 (noting that "the harmful effects of war have been portrayed in all styles of art").

<sup>178</sup> Paul Bouvier, 'Yo lo vi'. *Goya witnessing the disasters of war: an appeal to the sentiment of humanity*, 93 INT'L REV. RED CROSS 1107, 1107-08 (2011).

<sup>179</sup> GIJS VAN HENBERGEN, *GUERNICA: THE BIOGRAPHY OF A TWENTIETH-CENTURY ICON* 212 (2004).

<sup>180</sup> See UNESCO European Landscape Convention, Council of Europe, Oct. 20, 2000, European Treaty Series 176, III-7.

<sup>181</sup> See UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 11 I.L.M. 1358.

<sup>182</sup> See UNESCO Convention on the Protection of the Underwater Cultural Heritage, Nov. 2, 2001 (entered into force Jan. 2, 2009) UNESCO Doc.31C/Resolution 24; see 41 I.L.M. 37 (2002).

<sup>183</sup> See generally SILKE VON LEWINSKI, *INTERNATIONAL COPYRIGHT LAW AND POLICY* (2008).

<sup>184</sup> See generally JANET BLAKE, *INTERNATIONAL CULTURAL HERITAGE LAW* (2015); CRAIG FORREST, *INTERNATIONAL LAW AND THE PROTECTION OF CULTURAL HERITAGE* (2012); ENFORCING INTERNATIONAL CULTURAL HERITAGE LAW (Francesco Francioni & James Gordley eds., 2013); *CULTURAL LAW: INTERNATIONAL, COMPARATIVE, AND INDIGENOUS* (James A. R. Nafziger et al., eds. 2010).

<sup>185</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972.

international criminal law<sup>186</sup> to the law of armed conflict;<sup>187</sup> from the law of the sea<sup>188</sup> to international private law;<sup>189</sup> and from international economic law<sup>190</sup> to climate change law.<sup>191</sup>

Material culture can also play a role in international dispute settlement.<sup>192</sup> Certain artifacts can have documentary value. Objects can portray a significant legal event, such as the signature of a treaty, the outbreak of a war, or the legal consequences of war. They can constitute evidence at trials before international courts and tribunals.<sup>193</sup> They can also constitute the object or reason underlying a claimant's cause of action. For instance, the theft, looting, and destruction of cultural items during military conflicts has been subject to extensive debate in international law and has furthered a number of international law responses, in the form of conventions, guidelines, and high-profile disputes.<sup>194</sup>

Third, material culture can also be “a tool for normative renewal.”<sup>195</sup> By portraying how international law works in practice, material culture can highlight areas for improvement of the discipline. Material culture can express criticism, nurture dissent, and foster protest. This can spur adjustment, evolution, and reform of critical areas of international law. Material culture can be a tool for critical thinking and bring positive developments in the field of international law.

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<sup>186</sup> See generally CAROLINE EHLERT, PROSECUTING THE DESTRUCTION OF CULTURAL PROPERTY IN INTERNATIONAL CRIMINAL LAW (2014).

<sup>187</sup> See generally HELGA TURKU, THE DESTRUCTION OF CULTURAL PROPERTY AS A WEAPON OF WAR (2018); MARINA LOSTAL, INTERNATIONAL CULTURAL HERITAGE LAW IN ARMED CONFLICT (2017).

<sup>188</sup> See, e.g., Tullio Scovazzi, *The Law of the Sea Convention and Underwater Cultural Heritage*, 27 INT'L J. MARINE & COASTAL L. 753 (2012).

<sup>189</sup> See generally CHRISTA ROODT, PRIVATE INTERNATIONAL LAW, ART AND CULTURAL HERITAGE (2015).

<sup>190</sup> See generally CULTURE AND INTERNATIONAL ECONOMIC LAW (Valentina Vadi & Bruno de Witte eds., 2015); VALENTINA VADI, CULTURAL HERITAGE IN INTERNATIONAL INVESTMENT LAW AND ARBITRATION (2014).

<sup>191</sup> See generally CLIMATE CHANGE AS A THREAT TO PEACE: IMPACT ON CULTURAL HERITAGE AND CULTURAL DIVERSITY (Sabine von Schorlemer & Sylvia Maus eds., 2014).

<sup>192</sup> See generally V. Vadi & H. Schneider, *Art, Cultural Heritage and the Market: Legal and Ethical Issues*, in ART, CULTURAL HERITAGE AND THE MARKET: ETHICAL AND LEGAL ISSUES 1–26. (V. Vadi & H. Schneider eds., 2014).

<sup>193</sup> Philippe, *supra* note 58, at 233 (noting that the Nuremberg trial was the first international criminal trial where images were used as evidence of crimes); Christian Delage, *Image as Evidence and Mediation: The Experience of the Nuremberg Trials*, in M. Freeman (ed) LAW AND POPULAR CULTURE (2005) 491–503, 495 (reporting that “most of the existing images were to be taken by the Allied forces at the moment of the liberation of the camps” and, at 503, that such movies “contributed to elucidating what happened in the camps”); Joyce & Simm, *supra* note 169, at 295 (pinpointing that “in the fields of human rights and international criminal justice, film has been used as evidence”); see generally Joyce, *supra* note 33. Sharon Sliwinski, *Visual Testimony: Lee Miller's Dachau*, 9 J. OF VISUAL CULTURE 389, 403 (2010) (highlighting that in the aftermath of World War II, “pictorial evidence came to outweigh all other forms of testimony”).

<sup>194</sup> ANA FILIPA VRDOJAK, INTERNATIONAL LAW, MUSEUMS AND THE RETURN OF CULTURAL OBJECTS (2006); LOSTAL, *supra* note 182; ALPER TAŞDELEN, THE RETURN OF CULTURAL ARTEFACTS—HARD AND SOFT LAW APPROACHES (2016); HUI ZHONG, CHINA, CULTURAL HERITAGE, AND INTERNATIONAL LAW (2017).

<sup>195</sup> Eva Brems & Hilde Van Gelder, *Engaged Visual Art as a Tool for Normative Renewal in International Human Rights: The Case of Ariella Azoulay's Potential History* (2012), 4 EUR. SOC'Y OF INT'L L. (2014).

At the same time, engaging with material culture also presents some risks. The discipline of international law and material culture studies have been traditionally perceived as separate branches of knowledge. The increasing use of material culture in international legal theory and practice requires the acquisition of “a more refined capacity for critical visual judgment” and methodological awareness.<sup>196</sup> Material culture has not a mere aesthetic value; rather, it has a deep relationship with reality, conveys meaning, and expresses a point of view.<sup>197</sup> It “do[es] not simply resemble reality, [it] also tend[s] to stimulate . . . emotional responses . . . .”<sup>198</sup> “To the extent that visual images amplify emotion . . . , images tend to be more compelling than texts alone.”<sup>199</sup> The artistic and political value of material culture can clash with its historical and legal value. Both material culture and international law require interpretation and this often implies a degree of subjectivity. Material culture risks enhancing the political aspects of international law. Nonetheless, it can complement textual sources in a meaningful way, contributing to “the historical record precisely where words fail.”<sup>200</sup>

In conclusion, material culture and international law have interacted in various ways. This article has studied this interplay and provided a roadmap for further investigation, showing that material culture can provide an additional tool to conduct meaningful, fruitful and relevant research in international law, while also cautioning against the risks it presents.

## Conclusion

Hugo Grotius’ chest of books has no aesthetic merit, but a significant relevance for the (history of) international law. Not only does it epitomize a lawyer’s quest for freedom, but it also narrates a gripping tale of courage. It also contributes to unveil Grotius’ reliance on a number of previous scholars. The chest shows that the origins of international law are more pluralist than we used to think. It also shows that material culture matters to international law, and can contribute to its study in a significant way.

For centuries, international law has been dominated by textual representation. This article has investigated the question as to whether it is possible to understand, learn and practice international law differently. In particular, this article shows that international law and material culture have become increasingly porous. The interaction between material culture and international law takes place in different ways. Not only have certain objects exercised a long-lasting influence on international lawyers, but material culture can be the object of international regulation and/or international dispute settlement. Material culture can be a fruitful tool of research complementing traditional tools of legal investigation. It can

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<sup>196</sup> Richard K. Sherwin, *Visual Jurisprudence*, 57 N.Y.L. SCH. L. REV. 11, 14 (2012–2013).

<sup>197</sup> See Rodrigo Ferrada Stoeckel, *The Legal Image’s Forgotten Aesthetic*, 26 INT. J. SEMIOT. L. 555, 558 (2013).

<sup>198</sup> Sherwin, *supra* note 191, at 14.

<sup>199</sup> *Id.*

<sup>200</sup> Sharon Sliwinski, *Visual Testimony: Lee Miller’s Dachau*, 9 J. VISUAL CULTURE 389, 404 (2010).

provide international lawyers with “visual access to the past.”<sup>201</sup> It can also be a tool for normative renewal. Visual representations of international law aspects can contribute to highlight and critically assess the promise and pitfalls of the field. They can reveal “pressing needs . . . and anxieties as well as beliefs, hopes and aspirations” about international law.<sup>202</sup> Studying the linkage between the discipline of international law and material culture studies has the potential to defragment knowledge and overcome disciplinary boundaries. It has the potential to make international law more accessible across disciplines and among academic and other interested audiences.

At the same time, the use of material culture also presents some risks, such as that of politicizing international law. While some politicization is not necessarily a bad thing in the sense that it can be an opportunity for improvement, change and evolution, in some cases such politicization can be self-defeating, pointless and even harmful. There is a risk that media exposure delays processes of peace, or that it only presents a selection of the relevant facts, thus jeopardizing the proper functioning of international law and its dispute settlement mechanisms. However, this does not mean that material culture should not be relevant to international legal discourse in all cases.

The linkage between international law and material culture is high risk high gain. In this regard, some careful interaction between international law and material culture can help the former develop intellectual openness, overcome disciplinary boundaries, and raise new relevant questions. International lawyers are well trained in retrieving information in written texts, but have traditionally only marginally dealt with interpreting information encoded in objects. Yet, material culture can constitute a promising tool for investigating international law. At the same time, international lawyers should be aware of the fact that material culture presents a number of risks. As “the image of international law . . . now matters more than ever,”<sup>203</sup> the relationship between international law and material culture certainly deserves further study.

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<sup>201</sup> Agata Fijalkowski & Sigrun L. Valderhaug, *Legal Decisions, Affective Justice, and ‘Moving On?’*, 7 ONATI SOCIO-LEGAL SERIES 337, 340 (2017).

<sup>202</sup> Richard K. Sherwin, *Law’s Enchantment: The Cinematic Jurisprudence of Krzysztof Kieslowski*, in 7 LAW AND POPULAR CULTURE 87, 90 (Michael Freeman ed., 2005).

<sup>203</sup> Daniel Joyce, *Human Rights and the Mediatization of International Law*, 23 LEIDEN J. INT’L L. 507, 527 (2010).

